

[Advisory Opinion 1994-6]

May 11, 1994

[Name1 withheld]
c/o Kenneth B. Tecler
Chef, Walsh & Tecler
200 A Monroe Street, Suite 300
Rockville, Maryland 20850

Re: Request for Advisory Opinion

Dear [Name1 withheld]:

The Ethics Commission has considered the request for an advisory opinion submitted on your behalf by Kenneth B. Tecler, Esquire, counsel to the Housing Opportunities Commission (HOC), of which you are a member.

The following information was provided in Mr. Tecler's letter dated February 1, 1994. You serve as the Vice-Chair of the HOC. You are employed as the Executive Director of the National Association of Housing and Redevelopment Officials (NAHRO), which is a large association of organizations with an interest in the activities of the federal government and the Department of Housing and Urban Development (HUD) in housing matters. The membership of NAHRO includes 2500 governmental entities and 6500 members who are attorneys, developers, contractors, consultants, and housing experts. As Executive Director, you provide assistance to the members but do not have regular contact on a daily basis with every member.

Recently, you recognized the names of two NAHRO members as potential bidders on an HOC project. To avoid a conflict of interest, you recused yourself from consideration of the matter. At this juncture, you have requested an advisory opinion as to whether you may participate in HOC matters involving members of NAHRO.

Applicable Provisions of the Ethics Law

Pursuant to §19A-11(a)(1)(B) of the Ethics Law:

Unless permitted by a waiver, a public employee must not participate in:

- (1) any matter that affects, in a manner distinct from its effect on the public generally, any:

* * *

- (B) business in which the public employee has an economic interest;....

The definition of public employee includes a member of the HOC. §19A-4(m)(4) of the Montgomery County Code 1984, as amended.

Application of Ethics Law to Facts Presented

The conflict of interest that occurs in your situation derives from your participating in a decision involving an application by a member of NAHRO. Potentially, the grant of a project to the member could benefit your employer and, therefore, affect you in a manner distinct from the public generally. As a result, you would need a waiver of the Ethics Law to participate in the consideration of these projects.

To obtain a waiver, you must show that:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.

§19A-8(a) of the Montgomery County Code 1984, as amended.

The available information is insufficient for the Ethics Commission to grant a waiver at this time. Rather, the Commission must review a waiver request on a case-by-case basis. If you would like the Commission to reconsider your request for a waiver, the Commission suggests that you include the number of instances occurring in the course of a year in which recusal has become necessary, the amount of the contracts involved in those instances, the parties involved in the matter, and a description of the matter. In the meantime, you should continue to recuse yourself from matters in which you recognize that a member of the NAHRO is involved.

If you have any questions concerning this decision, please do not hesitate to contact the Commission.

Sincerely,
[signed]
Jay L. Cohen, Chairman
Montgomery County Ethics Commission

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cc: Kenneth B. Tecler, Esquire
Barbara McNally, Administrative Specialist
Ethics Commission